

Rules and Regulations of the Water Right Transition Assistance Pilot Project Program

11-12-1. Definitions. (a) “Active vested or certified water right” means a vested water right or currently certified appropriation water right that was put to lawful beneficial use in at least six out of the last 10 calendar years, including any water use that occurred before certification.

(b) “Chief engineer” means the chief engineer of the division of water resources, Kansas department of agriculture.

(c) “Closed to new appropriations” and “closed to further appropriations” mean that the chief engineer has issued a formal findings and order or has adopted a regulation and that either the formal findings and order or the regulation prevents the approval of new applications to appropriate water except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(d) “Commission” means the state conservation commission.

(e) “Consumptive use” means the gross diversions minus the following:

(1) The waste of water, as defined in K.A.R. 5-1-1; and

(2) the return flows to the source of water supply in the following ways:

(A) Through surface water runoff that is not waste; and

(B) by deep percolation.

(f) “Dry land transition plan” means a plan submitted by an applicant describing how the use of dry land crops or permanent vegetation, including warm season grasses and cool season grasses, or both uses, will be established on land that was previously irrigated. If permanent vegetation will be established on land that was previously irrigated, the plan shall meet the following requirements:

(1) Specifically describe the amount and timing of any irrigation that will be necessary to establish this cover; and

(2) not exceed three calendar years.

(g) “Eligible water right” means a water right that meets all of the following criteria:

(1) The water right is an active vested or certified water right that has not been abandoned and is privately owned.

(2) The water right has been verified by the chief engineer as being in an area that is in need of aquifer restoration or stream recovery and is closed to new appropriations of water by the chief engineer, except those for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(3) The state’s dismissal of the water right would have a net reduction in consumptive water use of the aquifer or stream designated for restoration or recovery by the chief engineer.

(4) The point of diversion is located within an eligible area.

(h) “Groundwater management district” and “GMD” mean any district created by K.S.A. 82a-1020 et seq., and amendments thereto.

(i) “Local entity” means any political subdivision chartered to address water conservation.

(j) “Partial water right” means a portion of a water right that will be formally and permanently reduced from a water right by the chief engineer upon approval of an application for enrollment based on the agreement of all of the owners of the water right. For a partial water right to be deemed an eligible water right, the partial water right shall be associated with a portion of the distribution system, a point of diversion, a place of use, or a type of use that is being physically discontinued. Before enrollment of the partial water right, the chief engineer shall determine the historic net consumptive use that was associated with each portion of the beneficial use of the water right being considered. At the time of enrollment of the partial water right, the owner shall reduce the quantity remaining under the portion of the water right not being enrolled in the water right transition assistance pilot project program and any overlapping water rights to the net consumptive use requirement associated with the remainder of the operation. A partial water right shall not be deemed an eligible water right if there is no physical change in the operation, including discontinuing a point of diversion, discontinuing a type of use, converting to a more efficient system, irrigating less water-intensive crops, or reducing the size of the place of use or the number of irrigated acres.

(k) “Priority area” means a geographic area that meets the following conditions:

(1) Is designated by one of the following:

(A) A groundwater management district and the chief engineer, if the area is within the boundaries of a groundwater management district; or

(B) the chief engineer, if the area is outside the boundaries of a groundwater management district; and

(2) is located within a target area that has been delineated for the purpose of ranking any applications being received for grant funding approval in the water right transition assistance pilot project program.

(l) “Program” and “WTAP” mean the water right transition assistance pilot project program.

(m) “Retirement goal of historic consumptive water use” means the total quantity of historic consumptive water use necessary to be retired to meet the goal of the water right transition assistance pilot project program in each target area. The identification of a retirement goal of historic consumptive water use in each target area provides a reference point for evaluating the program objectives of the water right transition assistance pilot project program. The attainment of a retirement goal of historic consumptive water use in a particular target area indicates that no more water right transition assistance pilot project program funds should be expended in that target area without a requantification of the retirement goal of historic consumptive water use.

(n) “Target area” means a geographic area that meets the following conditions:

(1) Is designated by one of the following:

(A) An applicable Kansas statute;

(B) a groundwater management district and the chief engineer, if the area is within the boundaries of a groundwater management district; or

(C) the chief engineer, if the area is outside the boundaries of a groundwater management district;

(2) is one of the following:

(A) A surface water basin, subbasin, or stream reach;

(B) a groundwater aquifer or aquifer subunit; or

(C) a combination of paragraphs (m)(2)(A) and (B); and

(3) is located in an area with a need for reduction of consumptive use of water.

(o) “Water right” means any vested right or appropriation right under which a person may lawfully divert and use water. A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used. The water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)

11-12-2. Eligible areas. (a) Each eligible area shall meet either of the following criteria:

(1) The area meets the following conditions:

(A) Is within a groundwater aquifer or aquifer subunit that the chief engineer has closed to further appropriations except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program; and

(B) is located where the rate of withdrawal of groundwater equals or exceeds the rate of recharge and the groundwater aquifer or aquifer subunit is designated by the chief engineer as being in need of aquifer restoration.

(2) The area meets the following conditions:

(A) Is within a surface water basin, subbasin, or stream reach that the chief engineer has closed to further appropriations except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program; and

(B) is located where the rate of withdrawal of surface water equals or exceeds the rate of inflow and the surface water basin, subbasin, or stream reach is designated by the chief engineer as being in need of stream recovery.

(b) Each eligible area shall also meet one of the following criteria:

(1) The board of the GMD has designated the area as a target area, and this designation has been approved by the chief engineer. Each eligible area within a GMD shall require a formal action by the board of a GMD requesting the chief engineer to approve the designation of a target area. The request shall include documentation on the criteria used by the GMD to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the retirement goal of historic consumptive water use for each proposed target area and the designation of any priority areas within the target area.

(2) Outside a GMD, the chief engineer has designated the area as a target area. Each eligible area outside a GMD shall require documentation of the criteria used by the chief engineer to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the retirement goal of historic consumptive water use for each proposed target area and the designation of any priority areas within the target area.

(c) The chief engineer shall notify the commission of all additional designated target areas and priority areas before July 1 of each grant funding cycle and shall provide technical data that will assist the commission in determining the ranking of the areas relative to any previously designated target areas or priority areas.

(d) The ranking of the additional designated target areas and priority areas relative to any previously designated target areas and priority areas shall be determined by the commission. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)

11-12-3. Application and review. (a) The application periods for the program shall be October 1 through November 15 and February 15 through March 31.

(b) Notification of the program shall be published in the Kansas register.

(c) The program procedures and application forms shall be available at the commission office and at conservation district offices.

(d) Each application shall be submitted on a form supplied by the commission. The application shall include all of the following:

- (1) The name, address, and telephone number of the owner of the water right;
- (2) the water right file number and the priority date of the water right;
- (3) the location of the point of diversion;
- (4) documentation of the annual water usage, in acre-feet, for the previous 10 years;
- (5) the authorized annual quantity of water associated with the water right;
- (6) the bid price expressed on a "per acre-foot of historic consumptive water use"

basis;

- (7) if the land is going to be planted to permanent cover, a dry land transition plan;
- (8) documentation that verifies historical crop information for the previous 10 years;
- (9) documentation of the normal rate of diversion during the normal irrigation season.

If the documentation is not based on data from an accurate water flowmeter, the results of a certified well flow rate test conducted no more than six months before the application date by a person or entity approved by the chief engineer and in a manner prescribed by the chief engineer shall be used for this documentation;

(10) the total amount of historic consumptive water use available for retirement or permanent reduction under the water right as determined from the calculation method specified in K.S.A. 2-1930(h) and amendments thereto; and

(11) the total amount of historic consumptive water use being proposed for retirement or permanent reduction and specification of whether only a partial water right is being submitted for retirement in the application.

(e)(1) Upon the commission's receipt of each application, it shall be reviewed for completeness by the commission. If the application is not complete, the missing information shall be provided by the applicant to the commission within 30 days of the commission's written request.

(2) After the application is determined to be complete, the application shall be provided by the commission to the chief engineer to determine the eligibility of the water right.

(f) Upon completion of the review by the chief engineer, the following certifications shall be requested by the commission from the chief engineer:

- (1) A statement indicating whether the water right is an eligible water right;
- (2) the historic consumptive water use associated with each water right or portion of a water right;
- (3) the potential impact of dismissing the water right on aquifer restoration or stream recovery; and
- (4) any other additional documentation necessary to quantify or qualify the water use reports.

(g) Comments and recommendations from the appropriate GMD shall be requested by the commission regarding WTAP applications in any target area within that GMD. The chief engineer and the appropriate GMD shall be notified by the commission regarding approval or disapproval of any WTAP applications in any target area within that GMD.

(h) The applications shall be prioritized for payment by the commission based on criteria that include the following:

(1) The timing and extent of the impact of the application on aquifer restoration or stream recovery;

(2) the impact on local water management strategies and on target areas designated by the board of each GMD and by the chief engineer; and

(3) the priority date of the water right.

(i) Each applicant shall be notified by the commission of the approval or the disapproval of the program application no later than 60 days after the close of the application period in which the application is filed. If an application is not approved, the application, water right dismissal form, and all other related documents shall be considered void and shall be returned to the applicant.

(j) Any application meeting the requirements of this article may be approved contingent upon funding and the receipt of official documentation by the commission that the water right has been dismissed by the chief engineer and its priority has been forfeited.

(k) The negotiations between owners and lessees regarding program participation shall not involve the commission.

(l) No more than 10 percent of a county's irrigated acres shall be eligible for the duration of this program.

(m) There shall be no financial contribution requirement for a local entity. However, financial contributions by a local entity may increase the priority of an application.

(n) Each program application that does not meet the requirements of these regulations shall be rejected by the commission. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)

11-12-4. Payment. (a) The application approval and payment amounts shall be based on the following:

(1) The priority date of the water right;

(2) the calculated quantity of the historic consumptive water use of the water right;

(3) the impact of the water right's dismissal or permanent reduction on aquifer restoration or stream recovery;

(4) the amount of monetary contributions from a local entity or the applicant, or both;

(5) the applicant's bid price; and

(6) the terms of any request to continue irrigating on a limited basis to establish permanent vegetation.

(b) The maximum amount paid by the commission for the retirement of a water right authorized for irrigation shall not exceed a base rate per acre-foot of historic consumptive water use made available for retirement under the water right to be dismissed or permanently reduced. The base rate shall be established annually by the commission after considering recommendations provided by the GMDs and the chief engineer.

(c) Each water right owner shall sign a water right transition assistance grant agreement before payment is made by the commission. Each grant agreement shall include the following provisions:

(1) The price to be paid by the commission to the water right owner for the dismissal or permanent reduction of the subject water right and the terms of payment;

(2) the date on which the agreement will become effective;

(3) the file number of the water right to be retired or permanently reduced;

(4) one of the following statements:

(A) The approval is conditional on documentation being provided to the commission indicating that the chief engineer has dismissed or permanently reduced the water right and ordered its priority to be forfeited; or

(B) the approval is conditional on documentation being provided to the commission indicating any terms of the chief engineer to continue irrigation on a limited basis, not to exceed three years, for the purpose of establishing permanent vegetation. The documentation shall include the date on which the water right dismissal will become effective and its priority will be forfeited; and

(5) if the point of diversion is located within a GMD, a provision that any remaining water user charges assessed by the district before the water right is dismissed will remain the sole responsibility of the owner of the water right.

(d) Payment shall be made in equal annual installments, not to exceed 10, or, if approved by the commission, in one lump sum payment. If annual payments are elected, the first payment shall be made within 60 days after execution of the water right transition assistance grant. The subsequent payments shall be made within 60 days after the beginning of each new state fiscal year. The following factors shall be considered by the commission when determining which payment schedule to use:

(1) The number of eligible applicants; and

(2) the amount of program funds for that year.

(e) If there is a standing crop at the time of application approval, payment shall not be made until after irrigation from the subject water right has permanently ceased. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)

11-12-5. Transition to dry land. (a) If land that will no longer be irrigated is to be planted, under this program, to permanent vegetation including warm or cool season grasses, the chief engineer may be requested by the commission to condition the dismissal of the associated water right to allow limited irrigation of the land for up to three years to establish this cover.

(b) The applicant shall submit a dry land transition plan to the commission if land is to be planted to warm or cool season grasses or other permanent vegetation. A dry land transition plan may be disapproved by the commission and modifications to any dry land transition plan may be required by the commission if the plan does not meet the requirements for soil erosion prevention practices in section IV of the "Kansas field office technical guide" as adopted by reference in K.A.R. 11-7-14. (Authorized by and implementing K.S.A. 2006 Supp. 2-1930; effective Aug. 3, 2007.)

11-12-6. Dismissal or permanent reduction of water right. (a) Each water right or partial water right for which payment is received from the program shall be dismissed or permanently reduced by the chief engineer, and the priority of the water right or that portion of the water right shall have been forfeited.

(b) The chief engineer shall be requested by the commission not to appropriate or reappropriate any additional water in an eligible area if payments have been made for the program in that eligible area, except for the following, if the use, permit, or exemption does not conflict with this program:

(1) Domestic use;

- (2) temporary permits;
- (3) term permits for five or fewer years; and
- (4) small use exemptions for 15 acre-feet or less.

(c) A copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the commission before the grantee receives the first payment. The requirements specified in this subsection shall be temporarily waived if a conditional water right is approved by the chief engineer under a dry land transition plan.

(d) For wells approved to continue operating under a dry land transition plan, a copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the commission within 60 days of the last time that the permanent vegetation is irrigated. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)

11-12-7. Petition for reconsideration. (a) Any water right owner may request reconsideration of any decision of the commission by filing a petition for reconsideration.

(b) Each petition for reconsideration shall be submitted in writing to the commission within 30 days of the commission's decision and shall state why the commission's decision should be reviewed and why the decision should be modified or reversed.

(c) The petition for reconsideration shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The commission's final decision shall state each reason for this determination.

(d) The decision of the commission shall be considered the final agency action if no petition for reconsideration of that commission decision has been received by the commission after 30 days from the date on which the decision was made. (Authorized by and implementing K.S.A. 2006 Supp. 2-1930; effective Aug. 3, 2007.)